

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
Cheng Xia Wang et al.,	:	
	:	
Plaintiffs,	:	
	:	17-CV-840 (VSB)
- against -	:	
	:	<u>OPINION & ORDER</u>
	:	
SHUN LEE PALACE RESTAURANT, INC.	:	
D/B/A SHUN LEE PALACE, et al.,	:	
	:	
Defendants.	:	
	:	
-----X		
<u>VERNON S. BRODERICK, United States District Judge:</u>		

On January 7, 2022, Defendants filed a Notice of Suggestion of Death to inform me that Plaintiff Haiping Wu had passed away.¹ (Doc. 281.) On April 4, 2022, Plaintiffs filed a Motion to Substitute Party to substitute Plaintiff Haiping Wu with Xiaolin Zhang, the administrator of the Estate of Haiping Wu. (Doc. 297.) On May 9, 2022, Defendants filed a response to the Motion to Substitute Party, stating that they did not oppose the motion but that they were unable to take decedent Haiping Wu’s deposition prior to his death, and thus did not have the opportunity to cross-examine decedent Wu regarding his allegations.

The decision to grant substitution is discretionary. *See Saylor v. Bastedo*, 623 F.2d 230, 236–237 (2d Cir.1980). I have the discretion to deny a motion to substitute a proper party for a deceased plaintiff if “circumstances have arisen rendering it unfair to allow substitution”.

In Plaintiff’s application to substitute, Plaintiffs have provided me with a redacted Certificate of Voluntary Administration on behalf of Haiping Wu. The certificate does not


¹ I take notice that Troy Law did not file a Notice of Suggestion of Death. Instead, Defendants filed the Notice after learning about Mr. Wu’s passing from Plaintiffs’ counsel.

contain the raised seal of the Queens County Surrogate's Court, and thus is not valid according to the certificate itself. (Doc. 298-1.) Plaintiffs enclose no death certificate, no marriage certificate, or even an obituary for Haiping Wu. Given this paucity of information, I cannot determine that Xiaolin Zhang is a "proper party" to substitute for the deceased plaintiff under Rule 25. It is hereby

ORDERED that the motion for substitution is denied without prejudice. If counsel wishes to renew the motion, they are directed to do so with additional proof and documentation, as well papers with caselaw from this circuit supporting their argument that Xiaolin Zhang is the proper party to substitute Decedent Haiping Wu's claim. The Clerk of Court is respectfully directed to terminate the motion at Doc. 297.

SO ORDERED.

Dated: March 16, 2023
New York, New York



VERNON S. BRODERICK
United States District Judge